

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

IN RE:)
)
OSCAR LAVON LYONS,) CHAPTER 7 BANKRUPTCY
DEBTOR) CASE NO. 93-50179
)
R. EUGENE CREWS and)
SOUTHEASTERN BANK,)
MOVANTS) ADVERSARY PROCEEDING
) NO. 94-5015
VS.)
)
OSCAR LAVON LYONS,)
RESPONDENT)

ORDER

Lavon Lyons ("Debtor") has asserted the right to a jury trial in this adversary proceeding seeking recovery for alleged fraud against defendants Southeastern Bank and R. Eugene Crews pursuant to the Supreme Court's holding in Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 109 S.Ct. 2782 (1989). The adversary proceeding filed by Debtor is a core matter. 28 U.S.C. §§ 157(b) (2) (C), 157(b) (2) (B), and 157(b) (2) (O).

Debtor has waived his right to a jury trial by filing his petition in bankruptcy. Haile Co. v. R.J. Reynolds Tobacco Co. (In re Haile Co.), 132 B.R. 979 (Bankr. S.D. Ga. 1991). As the Seventh Circuit Court of Appeals has explained:

The Supreme Court did not address the extent of the debtor's Seventh Amendment right to jury trial in bankruptcy court in Granfinanciera. However, if creditors `by presenting their claims ... subject ... themselves to all the consequences that attach to an

appearance,' Granfinanciera, 492 U.S. at 59 n. 14, 109 S.Ct. at 2799 n. 14, quoting Alexander v. Hillman, 296 U.S. 222, 241, 56 S.Ct. 204, 210, 80 L.Ed. 192, thereby losing any jury trial right otherwise guaranteed by the Seventh Amendment, debtors who initially choose to invoke the bankruptcy court's jurisdiction to seek protection from their creditors cannot be endowed with any stronger right. [footnote omitted]. A defendant or potential defendant to an action at law cannot initiate bankruptcy proceedings, thus forcing creditors to come to bankruptcy court to collect their claims, and simultaneously complain that the bankruptcy forum denies him or her a jury trial. [citations omitted].... Debtors then would be able to block their creditors' access to a jury trial without compromising their own ability to demand a jury in their preferred forum.

N.I.S. Corp. v. Hallahan (Matter of Hallahan), 936 F.2d 1496, 1505 (7th Cir. 1991).

The court's holding in Matter of Hallahan is directly on point, and this Court sees no reason to deviate from the logic of its holding. Accordingly, Debtor's demand for a jury trial in this adversary proceeding is denied.

SO ORDERED, this 29th day of September, 1994.

James D. Walker, Jr.
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that a copy of the attached and foregoing was mailed to the following:

William S. Orange, III
Attorney At Law
1805 Norwich Street
Brunswick, GA 31520

Marvin Pipkin
Attorney At Law
P. O. Box 455
Darien, GA 31305

William R. Little, III
Attorney At Law
P. O. Box 177
Waycross, GA 31502-0177

Terry A. Dillard
Attorney At Law
P. O. Box 898
Waycross, GA 31502

Delman Minchew
Attorney At Law
115 Albany Avenue
Waycross, GA 31501

Wiley A. Wasden, III
Chapter 7 Trustee
P. O. Box 8047
Savannah, GA 31412

U.S. Trustee's Office
P. O. Box 10487
Savannah, GA 31412

This _____ day of September, 1994.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court

